

Date of Director's Approval

Yatin Verma
1620 Via Cancion
San Marcos, CA 92069

**DECISION OF THE DIRECTOR
Habitat Loss Permit**

This Habitat Loss Permit cannot be relied upon as authorization for the clearing, grading or removal of any vegetation until 1) a valid Grading Permit, Clearing and Grading Permit, or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal, and 2) all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

APPLICATION NUMBER: HLP 02-005,

ASSOCIATED PERMIT(S): Brushing Permit; AD 02-020, ER# 02-08-016

NAME OF APPLICANT: Yatin Verma

DESCRIPTION/LOCATION OF LOSS:

The project is a Habitat Loss Permit for the removal of 0.35 acres of coastal sage scrub (CSS) associated with the Verma Brushing and Clearing Permit (AD-02-020) as shown on the attached Habitat Loss Exhibit dated April 5, 2004. This Habitat Loss Permit and Brushing and Clearing Permit are being issued to resolve a clearing violation for unauthorized clearing of 0.35 acres of CSS habitat in August 2001. The project site is a 2.84-acre parcel at 1620 Via Cancion, San Marcos in the North County Metro Community in unincorporated San Diego County at APN 222-041-02-00. Existing uses on the site include an existing single-family residence, swimming pool, driveway/parking area, and an SDGE easement along the parcel's eastern boundary.

In August 2001, approximately 0.35 acres of CSS was removed from the subject property and the adjacent parcel to the east. A site visit was conducted in June 2002 and no endangered or threatened species were identified. The CSS on site may have supported endangered or threatened species prior to clearing. The area was reseeded with a coastal sage scrub seed mix in October 2001. A site visit was conducted in February 2004 and determined that native CSS vegetation is returning to the previously cleared area.

Mitigation for impacts to 0.35 acres of intermediate-value CSS, as determined by the criteria established under the NCCP Logic Flow Chart, will occur at a 2:1 ratio with the off-site purchase of 0.70 acres of California gnatcatcher occupied habitat in a County-approved mitigation bank.

Off-site preservation of CSS will mitigate for the clearing of this property. Therefore, all significant direct effects to sensitive species and habitats associated with brushing of the Verma property have been minimized and/or mitigated to a level below significance. This brushing permit is in conformance with all standards and guidelines pursuant to the NCCP Process Guidelines.

DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing and Grading Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described Coastal Sage Scrub (CSS) habitat for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDF&G. If the loss of habitat, as authorized by this Habitat Loss Permit, has not

occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of CSS habitat expires.

CONDITIONS OF APPROVAL:

Prior to use and reliance on this permit, the following conditions shall be met:

- 1) Obtain approval from the County of San Diego of a Brushing Permit that authorizes the clearing and/or grading of the area addressed by this Habitat Loss Permit.
- 2) Prior to issuance of the Brushing and Clearing Permit, the applicant shall:
 - a. Provide for the approval of the Director of Planning and Land Use evidence that 0.70 acres of California gnatcatcher-occupied coastal sage scrub habitat credits within a County-approved mitigation bank in San Marcos or the closest available area to the satisfaction of the Director, Department of Planning and Land Use. Evidence of purchase shall include the following information to be provided by the mitigation bank:
 - (1.) A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 - (2.) If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 - (3.) To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 - (4.) An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

ENVIRONMENTAL FINDINGS:

Insert the environmental findings from the CEQA Transmittal Memo

FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

1. The proposed habitat loss is consistent with the Interim Loss Criteria in the Conservation Guidelines and with any subregional process if established by the subregion.

a. The habitat loss does not exceed the five percent guideline.

The proposed project has impacted 0.35 acres of CSS and no pairs of California gnatcatchers (*Poliophtia californica*). Approved CSS losses as of April 5, 2004, and including this approval, for both the entire unincorporated County and the affected subregion are as follows:

Unincorporated Area CSS Cumulative Losses

Total loss allowed under five percent guideline:	2953.3 acres
Cumulative loss of Coastal sage scrub to date:	689.67 acres
Net loss due to this project:	0.35 acres
Total cumulative loss:	690.02 acres
Remaining loss under five percent guideline:	2263.28 acres

Therefore, the habitat loss does not cumulatively exceed the five percent guideline.

b. The habitat loss will not preclude connectivity between areas of high habitat values.

The northern side of the project site supports CSS. Habitat on site has been identified as intermediate quality due to its connection to preserved open space within the cities of Carlsbad and San Marcos. The CSS on site is part of a narrow habitat strip bordered by residential subdivisions to the north and south. The habitat extends westward to a regional corridor. However, going eastward from the project site, the habitat narrows significantly and ends in residential development approximately 500 feet from the property. The clearing activity directly impacted a 0.35-acre band of CSS across the center of the property, extending onto the neighboring parcel to the east.

In a regional context, the 0.35 acres of CSS habitat on site was within a narrow band of CSS situated between two residential developments. The CSS band is not a corridor because the habitat ends to the east in a densely developed area within the boundaries of San Marcos. Therefore, the loss of 0.35 acres of CSS on this site and its subsequent revegetation will not preclude connectivity between areas of high habitat values.

c. The habitat loss will not preclude or prevent the preparation of the Subregional NCCP.

The site contains one sensitive resource, CSS. Although the clearing activity reduced the value of this habitat within the local area, the area is in the process of recovering to CSS, after being reseeded with a CSS seed mixture.

The loss of 0.35 acres of CSS on the Verma property will not significantly affect any preparations for a subregional NCCP. The clearing activity has impacted a small area within a narrow band of CSS habitat. This loss will not preclude or prevent the preparation of the subregional plan.

d. The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Guidelines.

The loss of 0.35 acres of CSS will be mitigated through on-site revegetation of the impacted area and off-site preservation of 0.70 acres of occupied CSS. The preservation of off-site habitat will provide for the long-term viability of habitat that has connectivity to high value districts. As such, the loss of 0.35 acres of coastal sage will be mitigated to the maximum extent practicable for intermediate-value habitat in accordance with Section 4.3 the NCCP Process Guidelines.

2. The habitat loss will not appreciably reduce the likelihood of survival and recovery of the listed species in the wild.

Prior to clearing, habitat on site may have been used by the California gnatcatcher. The CSS on site is part of a narrow area of coastal sage scrub that could serve a limited number of sensitive plant, bird, and small mammal species in the future. However, the location of the habitat in an area adjacent to existing residential development on three sides limits the value of the site to listed species. The illegal clearing activity slightly reduced the amount of habitat available for local species requiring CSS. However, the habitat has been reseeded with coastal sage scrub seed mix and is returning to its previous state. In addition, purchase of off-site CSS within a County-approved mitigation bank will contribute to the preservation of large blocks of habitat that will support the survival and recovery of listed species, particularly the California gnatcatcher.

3. The habitat loss is incidental to otherwise lawful activities.

The clearing of 0.35 acres of CSS was incidental to fire clearing to protect an existing structure on site. However, clearing was in excess of the 100-foot clearing allowed under the 1997 Memorandum of Agreement between the US Fish and Wildlife Service, the California Department of Fish and Game, the California Department of Forestry, the San Diego County Fire Chief's Association and the Fire District's Association of San Diego County. Since there was no permit issued prior to habitat removal, this permit will legalize clearing activity that occurred without prior County approval.

NCCP FLOWCHART

- 1) Is natural vegetation present? Yes.
- 2) Is Coastal sage scrub present? Yes
- 3) Is Coastal sage scrub the most dense in the subregion? No.
- 4) Is the land close to high value district? Yes. The nearest Subregional Focus Area 8.0 is within 1 mile to the southeast.
- 5) Is the land located in a corridor between higher value districts? No. The habitat on site is part of a narrow band of habitat that is adjacent to a corridor to the west, but ends in a dense residential development to the east.
- 6) Does the land support high density of target species? No.

Based on the NCCP Logic Flow Chart, the quality of coastal sage habitat supported on the Verma property is defined as Intermediate Value.

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

A. Prior to Subsequent Approval

Prior to issuance of a final County Clearing Permit, the applicant shall submit evidence that off-site mitigation has been purchased as required in the following condition:

Numbers 1 and 2.

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: The County of San Diego hereby notifies the applicant that State law (A.B. 3158) effective January 1, 1991, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable), a certified check payable to "County Clerk" in the amount of \$1,275 for a project with a Negative Declaration, or \$875 for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$25. The fees may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a de minimis impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provides that no project shall be operative, vested, or final until the required filing fee is paid.

Insert any additional required notices from the CEQA Transmittal Memo. Make sure there are no duplicates.

DEFENSE OF LAWSUITS AND INDEMNITY: The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own

expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense. ***Delete the above "Defense of Lawsuits and Indemnity" requirement if the project applicant is a County Department (e.g., DPW).***

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on . A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE
GARY L. PRYOR, DIRECTOR

BY:

J. ERIC GIBSON, Deputy Director
Development Services

JEG:CS:tf

Attachments

Make sure to attach the necessary USGS and stamped plot plans for both the area(s) of take and the area(s) of mitigation.

cc: Susan Wynn, U.S. Fish and Wildlife Service, Carlsbad Field Office, 6010 Hidden Valley Road, Carlsbad, CA 92009 **(via overnight mail)**
William Tippetts, c/o California Department of Fish and Game, Natural Community Conservation Planning, 4949 Viewridge Avenue, San Diego, CA 92123 **(via overnight mail)**
Christine Stevenson, Project Analyst, Department of Planning and Land Use, M.S. 0650
Joseph Farace, Planning Manager, Department of Planning and Land Use, M.S. 0650 (without attachments)
Tracy Cline, Department of Planning and Land Use, M.S. 0650 (including original USGS map[s]) **(2 copies at case closure)**
Carl Hebert, Case Tracking System, Department of Planning and Land Use, M.S. 0650 (without attachments)
Philip L. Rostodha, Code Enforcement Officer, Department of Planning and Land Use, M.S. 0650
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